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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BOUTAH, ALINA A

ART UNIT

PAPER NUMBER

2143

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/587,236	<b>Applicant(s)</b> THOMAS ET AL.	
	<b>Examiner</b> ALINA N. BOUTAH	<b>Art Unit</b> 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10,12-15,17,18,20,29,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, 12-15, 17, 18, 20, 29, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to Applicant's amendment filed February 26, 2007. Claims 1, 2, 4-10, 12-15, 17, 18, 20, 29, 31 and 32 are pending in the present application.

### ***Interview Summary***

On May 19, 2008, the Examiner made a courtesy phone call to Application's representative suggesting that the application would be allowed if independent claims were amended to recite certain elements from the abstract of the invention. However, upon careful search update, a new found prior art was found. Therefore the indicated allowability is hereby withdrawn. Examiner regrets any inconvenience.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-10, 12-15, 17, 18, 20, 29, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,796,952 issued to Davis et al. (hereafter referred to as Davis) in view of USPN 6,359,557 issued to Bilder in further view of USPN 6,606,657 issued to Zilberstein et al. (hereinafter referred to as Zilberstein).

Regarding claim 1, Davis teaches a system for monitoring usage of an electronic device comprising: a client component installed in a client device (col. 8, lines 30-50 – “the tracking program may be downloaded and installed in a client process”), said client component including a client service configured to request a user associated profile from a profile database (col. 15, lines 20-40 – the client automatically fetches the Java code, download, initialize, and start operation of the applet. After the applet is initialized, it contacts server B to obtain other resources it needs such as client information and historical database profile (S607B)) and a client monitoring agent created by the client service being operative to monitor usage of said client device in accordance with the profile for the user and to generate corresponding usage (col. 13, lines 57-62 – “the tracking program may be used not only to monitor the time spent by a user in a web page or ab ad banner, but may also be used to create a more complex “historical” user profile to permit the server to assemble a web page or target an ad banner based upon the diverse interests of respective users,” col. 14, line 47 to col. 15, line 5 – “the tracked information may be used to assemble resources geared toward the user’s interests. Based upon the historic user profiles created in the server database, downloading of information to the same client on a subsequent visit to the same or different web page may be done on a more intelligent basis.”); and

a server component including the profile database, the server component being installed on a server device in communication with said client device, for receiving said usage data from said client device (figure 4 – S404; col. 4, line 64 to col. 5, line 3 – “the acquired information is preferably stored on a server and used to build historical profiles of individual users, to serve out highly targeted information based upon user profiles, as well as to extract information about how

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much data was downloaded by a respective client, and how long or how often specific files were displayed or in use by the client.”);

wherein said profile includes information specifying which application programs, which are not a part of the system for monitoring usage, and which features of said application programs, installed on said client device are to be monitored by said client component (col. 14, line 47 to col. 15, line 5 – “previous choices made by a user on a particular client computer and stored in a user profile database may be used to determine which of the resources is to be downloaded to that client using simple logical processing instructions. For instance, a user profile which indicates that a user has a greater interest in sports-related information than in historical information may be used to download sports-related resources, such as GIF-type images and advertisements. Since the user has previously expressed a greater interest in sports, sports-related advertisements may therefore be targeted to that user.”).

However, Davis does not explicitly teach a client service configured to request a user associated monitoring profile and monitoring usage of said client device in accordance with the monitoring profile for the user. In an analogous art, Bilder teaches a client service configured to request a user associated monitoring profile and monitoring usage of said client device in accordance with the monitoring profile for the user (col. 3, lines 457). At the time the invention was made, one of ordinary skill in the art would have been motivated to employ a monitoring profile is unique for each user, one would use it because it is easily modified, thus facilitating the monitoring process.

Although Davis teaches monitoring usage during usage of said client device, the server component constructing an in-memory model of said usage of said client and storing said usage

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data in a relational data store (figure 4; col. 15, lines 20-40), Davis does not explicitly teach the monitoring of said usage of said client while the usage continues (i.e. real-time as disclosed in Applicant's specification pages 139-140).

In an analogous art, Zilberstein teaches monitoring usage of a client device in real-time (col. 3, lines 1-9; and figure 4). At the time the invention was made, one of ordinary skill in the art would have been motivated to monitor usage of an electronic device in real time in order to allow users access information regarding the usage instantaneously, therefore facilitating the system maintenance.

Regarding claim 2, Davis teaches the system of claim 1 further including a data management component disposed to store said monitoring profile and to store said usage data provided to said server device (col. 4, line 63 to col. 5, line 3).

Regarding claim 4, Davis teaches the system of claim 1 further including a profile management component for creating said monitoring profile, said monitoring profile including a plurality of application profiles each associated with one of said application programs (col. 5, lines 35-44).

Regarding claim 5, Davis teaches the system of claim 1 further including a data analysis component for, based upon said usage data, determining usage statistics associated with application program installed on said client device wherein said usage statistics include

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measurements of usage time, number of uses, and sequence of usage of specified ones of said application programs (col. 4, lines 13-15, 25-32, 41-53).

Regarding claim 6, Davis teaches the system of claim 1 further including a profile management component for creating and editing said monitoring profile, said monitoring profile specifying which application programs installed on said client device are to be monitored and a frequency with which said usage data is to be reported to said server component (col. 4, line 64 to col. 5, line 3).

Regarding claim 7, Davis teaches the system of claim 6 wherein said profile management component allows for definition of a set of users of said client device to be monitored in accordance with said monitoring profile (Abstract).

Regarding claim 8, Davis teaches the system of claim 1 wherein said client component includes a client monitoring agent for collecting said usage data in accordance with said monitoring profile and for providing said usage data to said server component, said client component further including a client service for requesting said monitoring profile from said server component and for starting said client monitoring agent upon receipt of said monitoring profile from said server component (figure 3; Abstract; col. 4, line 3 to col. 5, line 55).

Claim 9 is similar to claim 1 except there are a plurality of client components installed on a plurality of client computers, therefore is similarly rejected under the same rationale (figures 1 and 4; Abstract; col. 4, line 3 to col. 5, line 55).

Regarding claim 10, Davis teaches the system of claim 9 further including a data management component disposed to store said monitoring profiles and to store said usage data provided to said server component from each of said client components (figure 3).

Regarding claim 12, Davis teaches the system of claim 10 further including a profile management component for creating each of said monitoring profiles that each of said monitoring profiles includes a plurality of application profiles, each of said application profiles being associated with one of said associated application programs (figure 6).

Regarding claim 13, Davis teaches the system of claim 9 further including a profile management component for creating each of said monitoring profiles and for specifying which of said monitoring profiles will be applicable to usage of said client computers by particular users (figure 6).

Regarding claim 14, Davis teaches a method for monitoring computer usage comprising the steps of:

requesting a user associated monitoring profile from a profile database (col. 15, lines 20-40 – the client automatically fetches the Java code, download, initialize, and start operation of



the applet. After the applet is initialized, it contacts server B to obtain other resources it needs such as client information and historical database profile (S607B));

receiving the associated monitoring profile from the profile database (S607B);

creating a client monitoring agent to monitor the user activity in accordance with the monitoring profile (col. 13, lines 57-62 – “the tracking program may be used not only to monitor the time spent by a user in a web page or ab ad banner, but may also be used to create a more complex “historical” user profile to permit the server to assemble a web page or target an ad banner based upon the diverse interests of respective users;” col. 14, line 47 to col. 15, line 5 – “the tracked information may be used to assemble resources geared toward the user’s interests. Based upon the historic user profiles created in the server database, downloading of information to the same client on a subsequent visit to the same or different web page may be done on a more intelligent basis.”);

using a respective monitoring profile, monitoring usage of each of a plurality of client computers of the one or more client computers (col. 13, lines 57-62 and col. 14, line 47 to col. 15, line 5), wherein each respective monitoring profile includes information specifying which application programs other than the monitoring profile, and which features of said application programs, installed on said client device are to be monitored by said client component (col. 14, line 47 to col. 15, line 5 – “previous choices made by a user on a particular client computer and stored in a user profile database may be used to determine which of the resources is to be downloaded to that client using simple logical processing instructions. For instance, a user profile which indicates that a user has a greater interest in sports-related information than in historical information may be used to download sports-related resources, such as GIF-type

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images and advertisements. Since the user has previously expressed a greater interest in sports, sports-related advertisements may therefore be targeted to that user.”);

generating usage data based upon said monitoring and providing said usage data to a server computer (col. 13, lines 57-62 and col. 14, line 47 to col. 15, line 5); and

transmitting said monitoring profiles to said client components from said server computer (Abstract; figures 1 and 3; col. 4, line 3 to col. 5, line 55).

However, Davis does not explicitly teach a client service configured to request a user associated monitoring profile and monitoring usage of said client device in accordance with the monitoring profile for the user. In an analogous art, Bilder teaches a client service configured to request a user associated monitoring profile and monitoring usage of said client device in accordance with the monitoring profile for the user (col. 3, lines 457). At the time the invention was made, one of ordinary skill in the art would have been motivated to employ a monitoring profile is unique for each user, one would use it because it is easily modified, thus facilitating the monitoring process.

Although Davis teaches monitoring usage during usage of said client device, the server component constructing an in-memory model of said usage of said client and storing said usage data in a relational data store (figure 4; col. 15, lines 20-40), Davis does not explicitly teach the monitoring of said usage of said client while the usage continues (i.e. real-time as disclosed in Applicant’s specification pages 139-140).

In an analogous art, Zilberstein teaches monitoring usage of a client device in real-time (col. 3, lines 1-9; and figure 4). At the time the invention was made, one of ordinary skill in the art would have been motivated to monitor usage of an electronic device in real time in order to

allow users access information regarding the usage instantaneously, therefore facilitating the system maintenance.

Regarding claim 15, Davis teaches the method of claim 14 further including the step of storing said monitoring profiles remote from said client computers, and the step of storing said usage data provided to said server component from each of said client components (figure 4).

Regarding claim 17, this is similar to claim 14, therefore is rejected under the same rationale.

Regarding claim 18, this is similar to claim 7, therefore is rejected under the same rationale.

Regarding claim 20, Davis teaches the method of claim 14 further including the step of monitoring usage statistics for specified features of said application programs via predefined application programming interfaces of said application programs (col. 4, lines 13-15, 25-32, 41-53).

Regarding claim 29, Davis teaches the system of claim 1 wherein said client component includes means for monitoring usage statistics for specified features of said application programs via predefined application programming interfaces of said application programs (col. 3, lines 4-14).

Regarding claims 31 and 32, although Davis does not explicitly teach the system of claim 1 wherein the client component comprises a hooks dynamic linked library injected into one or more application programs activated by a user, it is well known in the computing art (particularly programming) that in order to execute a program, a procedure must be called on. In this case, a dynamic link library or DLL as claimed.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALINA N. BOUTAH whose telephone number is (571)272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alina N Boutah/  
Examiner, Art Unit 2143